

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

Maurice Rogers,
Petitioner

vs

Case No. 1:02cv79
(Dlott, J.)

Harry K. Russell,
Respondent

ORDER

On September 16, 2003, this Court entered an Order adopting the United States Magistrate Judge's Report and Recommendation to grant in part and deny in part the respondent's motion to dismiss and to dismiss three of petitioner's four grounds for relief with prejudice on statute of limitations grounds. (*See Docs. 6, 11*). On May 27, 2004, this Court entered a final Order and Judgment in the case, adopting a subsequent Report and Recommendation to deny with prejudice petitioner's remaining ground for relief. (*Docs. 15, 17, 18*). In the May 27, 2004 Order and Judgment, this Court certified pursuant to 28 U.S.C. § 1915(a)(3) that an appeal would be taken in "good faith" and, therefore, granted petitioner leave to proceed on appeal *in forma pauperis* upon a showing of financial necessity. (*Docs. 17, 18*).

This matter is now before the Court for ruling on petitioner's application and affidavit to proceed on appeal *in forma pauperis* (Doc. 20), as well as petitioner's motion for appointment of counsel (Doc. 19). Petitioner's financial affidavit (Doc. 20) demonstrates that petitioner has insufficient funds to proceed on appeal from this Court's final Order and Judgment of May 27, 2004. Upon such showing of financial necessity, this Court hereby GRANTS petitioner's application for leave to proceed on appeal *in forma pauperis* (Doc. 20) in accordance with its May 27, 2004 Order and Judgment (*see Docs. 17, 18*). It is FURTHER ORDERED that petitioner's motion for

appointment of counsel on appeal (Doc. 19) is DENIED. Petitioner remains free, however, to request appointment of counsel on appeal from the United States Court of Appeals for the Sixth Circuit.

IT IS SO ORDERED.

s/Susan J. Dlott
Susan J. Dlott, Judge
United States District Court

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

MAURICE ROGERS,

Petitioner-Appellant,

*

Appeals Court Case No. _____

vs.

*

HARRY K. RUSSELL,

*

Respondent-Appellee

STATE OF OHIO)

)SS:

AFFIDAVIT OF MAURICE ROGERS

COUNTY OF MADISON)

Maurice Rogers, being duly sworn, depose and says:

1. That I have personal knowledge of the facts stated herein and I am competent to testify as to the truth of the same.

2. That I am the petitioner-appellant in the habeas corpus proceeding in case number 1:02cv79, wherein I am being incarcerated at London Correctinoal Institution in London, Ohio.

3. That on August 23, 2004, the district court granted the Certificate of Appealability in good faith but failed to stated what grounds were appealable.

4. That on August 10, 2004, the prison had a mass shakedown which resulted in petitioner-appellant legal papers being destroyed or lost, and petitioner-appellant is now trying to obtain these legal records from the Clerk of Courts.

5. That petitioner-appellant is a layman at law and need legal help in filing an appeal, and an extension is necessary to gather records and research the case or issues.

Further Affiant Sayeth Naught.

Maurice Rogers

Maurice Rogers, pro se
LoCI #345-940 /P.O. Box 69
London, OH 43140-0069

SWORN TO BEFORE ME AND SUBSCRIBED IN MY PRESENCE THIS 7th DAY OF
SEPTEMBER, 2004.



GILBERT A. HURWOOD
Notary Public
in and For the State of Ohio
My Commission Expires 01/01/06

Gilbert A. Hurwood
NOTARY PUBLIC

(EXHIBIT - B)

Maurice Rogers
LoCI #345-940
P.O. Box 69
London, OH 43140-0069

September 2, 2004

Clerk Of Court
United States District Court
324 Potter Stewart / U.S. Courthouse
100 East Fifth Street
Cincinnati, OH 45202

Re: Rogers v. Russell, Case No. 1:02cv79

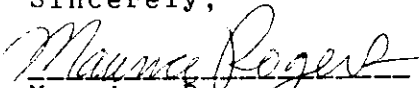
Dear Clerk,

I recently received a court 'Order' where the court certified that petitioner could appeal to the Sixth Circuit Court of Appeals the decision 'from' district court pursuant to 28 U.S.C. §1915(a)(3).

I am writing this letter to you because I need you to send me a copy of the district court final order and judgment filed by the court on May 27, 2004. (Doc.15). During a mass shake down of the prison on August 10, 2004, some of my legal papers came up missing, and I need a copy of this particular document in order to perfect my appeal. Also, I need a copy of my docket sheet so I can refer to documents by number in my appeal brief. The Court further order that I could proceed on my appeal in forma pauperis and I need to know if all the records will be transferred over?

I would greatly appreciate your immediate response to my letter and request, and thank you for your time and attention.

Sincerely,


Maurice Rogers